

These are the tentative rulings for civil law and motion matters set for Thursday, February 5, 2015, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, February 4, 2015. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

**NOTE: Effective July 1, 2014, all telephone appearances will be governed by Local Rule 20.8. More information is available at the court's website, [www.placer.courts.ca.gov](http://www.placer.courts.ca.gov).**

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EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

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**1. M-CV-0055020      Wells Fargo Bank, N.A. vs. Tremaine, James Q.**

Plaintiff's Motion to Vacate Dismissal is denied as plaintiff did not bring the request within 6 months of entry of the request for dismissal as required under CCP§473(b).

**2. M-CV-0059954      Matulich, David B. vs. Shannon, Salvador, et al**

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, it shall be heard in Department 43:

Defendant's Motion to Clarify Judgment is denied. Initially, the proof of service submitted by defendant is incomplete as it does not state the documents that were served on plaintiff. Even if a proper proof of service existed, defendant's motion is still improper to grant. The October 27, 2014 judgment correctly reflects that plaintiff was awarded \$2,117.98 in damages and \$240 in costs for a total recovery of \$2,357.98. The minutes from the May 30, 2014 court trial state that defendant recovered nothing in the small claims matter that was consolidated with the unlawful detainer action. Contrary to defendant's assertions, there are no applicable offsets stated on the record from the May 30, 2014 court trial. For these reasons, the motion is denied.

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**3. M-CV-0062764      Masterson, Michael vs. Brumley, David et al**

Defendant's Demurrer to the Complaint is overruled. Initially, the court notes there is no proof of service in compliance with CCP§1013. Furthermore, the allegations in the complaint are sufficiently pled to allege an unlawful detainer cause of action.

Defendant is ordered to file and serve an answer or denial on or before February 10, 2015. (CCP§1167.3.)

**4. M-CV-0062844      Ortiz vs. Martinez**

The appearances of the parties are required on the hearing for defendants' motion to quash.

**5. S-CV-0026760      Yanez, Michael vs. Union Pacific Railroad Co., et al**

The demurrer and motion to strike are continued, on the court's own motion, to February 26, 2015 at 8:30 a.m. in Department 2 to be heard by the Honorable Garen Horst.

**6. S-CV-0030222      Bennett, Richard, et al vs. Centex Homes, et al**

Cross-Defendant Fletcher Plumbing's Motion for Determination of Good Faith Settlement

The unopposed motion is granted. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling cross-defendant's proportionate shares of liability for plaintiffs' injuries and therefore is in good faith within the meaning of CCP§877.6.

Cross-Defendant Sacramento A-1 Door's Motion for Determination of Good Faith Settlement

The unopposed motion is granted. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling cross-defendant's proportionate shares of liability for plaintiffs' injuries and therefore is in good faith within the meaning of CCP§877.6.

**7. S-CV-0030424      Saladin, Jeffrey vs. Sanders, Trevor, et al**

Financial Pacific Insurance Co.'s unopposed Motion for Leave to Intervene is granted. The complaint in intervention shall be filed and served on or before February 13, 2015.

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**8. S-CV-0033350                      Miles, Thomas, et al vs. Ford Motor Company**

Defendant's Motion to Reopen Discovery is denied as defendant has not sufficiently shown diligence in bringing the motion. (CCP§2024.050(b)(2).) The court declines to grant defendant's alternative request to exclude plaintiffs' expert witness, which may be raised by defendant at the time of trial. Both parties' requests for sanctions are denied.

**9. S-CV-0033368                      Brar, Hukum, et al vs. Boparai, Gurdev Singh, et al**

Defendant's Demurrer to Complaint

Ruling on Request for Judicial Notice

Defendant's original and amended requests for judicial notice are granted.

Ruling on Demurrer

The demurrer is sustained without leave to amend. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (CCP§430.10(e).) A demurrer may also raise a party's lack of capacity to sue. (CCP§430.10(b).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, the allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) In this case, the complaint is deficient as one of the plaintiffs is a suspended corporation that lacks the capacity to sue. (*Reed v. Norman* (1957) 48 Cal.2d 338, 342.) As to the remaining plaintiffs, there are insufficient factual allegations to support any of the causes of action in the complaint since the underlying allegations allege a relationship between the suspended corporate plaintiff and defendants, not the individual plaintiffs.

The demurrer is sustained without leave to amend since the failure to oppose a demurrer may be construed as having abandoned the claims. (*Herzberg v. County of Plumas* (2005) 133 Cal.App.4th 1, 20.)

**10. S-CV-0033542                      Dias, Eric vs. PNC Mortgage, Inc., et al**

Defendant's motion for judgment on the pleadings is granted in part. As to seventh cause of action for negligence, the allegations are insufficiently pled as a lender is generally only liable for negligence where it "actively participates" by exceeding its scope "beyond the domain of the usual money lender." (*Nymark v. Heart Fed. Sav. & Loan Assn.* (1991) 231 Cal.App.3d 1089, 1096.)

The ninth cause of action for equitable accounting is also insufficiently pled since plaintiff has not alleged any facts showing that a balance would be due from the

defendants to plaintiff. (*St. James Church of Christ Holiness v. Superior Court* (1955) 135 Cal.App.2d 352, 359.) Any other duty to provide an accounting only arises when a written request for one is made prior to the notice of sale being recorded and Plaintiff fails to state sufficient facts to establish such a request was made prior to the notice of sale. (Civil C§2943(c).) The motion as to the seventh and ninth causes of action is granted without leave to amend.

The remaining causes of action challenged by defendants are sufficiently pled when the first amended complaint is read as a whole. The motion is denied as to the eighth, tenth, eleventh, and twelfth causes of action.

**11. S-CV-0034068 Walsh, Liliya, et al vs. Federal Nat'l Mortgage Ass'n., et al**

The demurrer, motion to strike, and motion to expunge lis pendens are continued, on the court's own motion, to February 24, 2015 at 8:30 a.m. in Department 32 to be heard by the Honorable Mark S. Curry.

**12. S-CV-0034350 2012-SIP-1 Venture, LLC vs. Sonora Petroleum, Inc., et al**

Plaintiff's Motion to Authorize Sale of Property

As an initial matter, the court denies defendant's request to present oral testimony and/or request for an evidentiary hearing. The motion is denied without prejudice as plaintiff has not sufficiently established the basis to expand the receiver's existing powers to include the listing and sale of the property.

Cross-Defendant's Demurrer to the Cross-Complaint

Ruling on Requests for Judicial Notice

Cross-defendant's request for judicial notice is granted. Cross-complainant's request for judicial notice is granted.

Ruling on Demurrer

The demurrer is overruled. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (CCP§430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, the allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) When read as a whole, the cross-complaint alleges sufficient facts to support the four causes of action.

Any answer or general denial shall be filed and served on or before February 20, 2015.

**13. S-CV-0034500                      Andoria LLC vs. Gaube, Donald F., et al**

The motion to retain jurisdiction over settlement is continued to March 5, 2015 at 8:30 a.m. in Department 40. While the court is in receipt of an opposition and reply, there are no moving papers for the underlying motion in the file. The moving party is requested to submit an endorsed filed copy of the moving papers by February 20, 2015.

**14. S-CV-0034856                      Raganit, Sally Trustee, et al vs. Lee, Alfred, et al**

The Receiver's final report and accounting is hereby approved, and all activities of the Receiver in connection with the administration of the receivership estate as described therein and in the Application are hereby confirmed and approved, and the Receiver is authorized to pay the Lenders any and all remaining funds in the receivership estate at closing after payment of all allowed expenses of the estate, including all allowed Receiver's fees and expenses and the fees and expenses of Receiver's counsel.

Fees and expenses previously paid to the Receiver Michael C. Brumbaugh are hereby allowed and approved, and any aforementioned unpaid fees and expenses incurred for the period beginning July 25, 2014 through the finalization of the receivership estate are approved and authorized to be paid, including the \$2,540.00 and \$12,160.00 stated in the final report.

The Receiver Michael C. Brumbaugh is discharged, and the Receiver, his deputies, members, officers, agents, employees, attorneys, and representatives are hereby discharged and released from any and all claims and liabilities that were asserted and/or could have been asserted in the receivership estate and in connection with their administration of the receivership estate.

The Receiver, his deputies, members, officers, agents, employees, attorneys, and representatives are relieved from all duties and responsibilities in connection with the estate.

The Receiver's bond is exonerated.

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The demurrer is dropped from the calendar as a request for dismissal was entered on February 4, 2015.

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